

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY ALGIERS

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E.O. 11652: N/A

TAGS: SNAR, SHUM, AG

SUBJECT: ALGERIAN DRUG LAW

REF: ALGIERS 988

1. DEPARTMENT CONCURS IN YOUR SUGGESTION PARA 5 REFTEL.
YOUR PROTEST SHOULD MAKE THE FOLLOWINGPOINTS:

A. THE IMPOSITION OF PENALTIES SIGNIFICANTLY MORE SEVERE
THAN THOSE IN FORCE AT THE TIME THECRIME WAS COMMITTED
IS A JUDICIAL PRACTICE GENERALLY CONDEMNEDBY INTERNATIONAL
CUSTOM AND PRINCIPLES OF LAW. THEUNITED STATES THUS
CONSIDERS THAT THE RETROACTIVE APPLICATION OF THE NEW DRUG
LAW'S PENALTIES TO AMERICAN CITIZENS CONSTITUTES A MANIFEST
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INJUSTICE UNDER INTERNATIONAL LAW.

B. UNDER CUSTOMARY PRINCIPLES OF INTERNATIONAL LAW AN ALIEN HAS THE RIGHT TO BE TRIED INACCORDANCE WITH THE LAW OF THE STATE THAT IS TRYING HIM. THE NEW DRUG LAW INSOFAR AS IT APPLIES PENALTIES RETROACTIVELY VIOLATES ARTICLE 2 OF THE ALGERIAN PENAL CODE, AND THE SENTENCING OF AMERICANS IN COMPLIANCE WITH THE NEW STANDARDS THUS CONSTITUTES A DENIAL OF JUSTICE IN INTERNATIONAL LAW.

C. ALGERIA IS BOUND BY ITS UN CHARTER OBLIGATIONS TO "PROMOTE UNIVERSAL RESPECT FOR, AND OBSERVANCE OF, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS FOR ALL" (ARTICLE 55). THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IS ONE OF THE MOST IMPORTANT SOURCES DEFINING THE CONTENT OF THAT OBLIGATION, AND DECLARES IN ARTICLE 11 THAT "A HEAVIER PENALTY (SHALL NOT) BE IMPOSED THAN THE ONE THAT WAS APPLICABLE AT THE TIME THE PENAL OFFENCE WAS COMMITTED." MOREOVER, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, WHICH ALGERIA HAS SIGNED FYI BUT NOT RATIFIED END FYI, STATES IN ARTICLE 15 THAT "A HEAVIER PENALTY (SHALL NOT) BE IMPOSED THAN THE ONE THAT WAS APPLICABLE AT THE TIME WHEN THE CRIMINAL OFFENCE WAS COMMITTED." WHILE THE COVENANT IS NOT YET IN FORCE, IT ALSO IS PERSUASIVE EVIDENCE OF ALGERIA'S OBLIGATIONS UNDER ARTICLE 55 OF THE UN CHARTER.

2. WE ALSO AGREE WITH THE IMPLICATION OF PARA 3 REFTEL THAT YOUR PROTEST SHOULD NOTE WE ARE NOT NOW DISPUTING THE GUILT OR INNOCENCE OF THOSE CONVICTED, NOR HAVE WE COMPLAINTS ABOUT THE PROCEDURAL FAIRNESS OF THE TRIAL. OUR ONLY CONCERN IN THIS PROTEST IS THAT RETROACTIVE PUNISHMENT NOT BE IMPOSED ON THE CONVICTED AMERICANS. KISSINGER

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